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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,225	09/27/2001	Robert Gjestvang	G006.PAT-1	3878
7590	03/17/2004		EXAMINER	
Emery L. Tracy P.O. Box 1518 Boulder, CO 80306-1518			KORNAKOV, MICHAIL	
			ART UNIT	PAPER NUMBER
			1746	

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

09/965,225

**Applicant(s)**

GJESTVANG, ROBERT

**Examiner**

Michael Kornakov

**Art Unit**

1746

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 12 February 2004.  
2a) This action is **FINAL**.      2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-9 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 1-9 is/are rejected.  
7) Claim(s) 7 and 8 is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on 11 December 2001 is/are: a) accepted or b) objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date 1/22/2002.

4) Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 1-9 and cancellation of claims 10-20 is acknowledged in Applicant's Reply, dated 02/12/2004.

### ***Drawings***

2. The submission of new formal drawings is required in this application. The presently submitted informal drawings are acceptable for examination purposes, however, some positions and notes on these drawings are difficult to read and understand. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- The recited in claim 1 "upon activation of the fluid source...the telescoping pipe assembly extends into the mixer drum" constitutes an indefinite subject matter, because it is not clear whether the structure, which is specifically positioned and capable of extending (automatically?) into the drum under the influence of fluid or simultaneously with activation of fluid source, but without fluid affection is claimed, or the cleaning processing step is recited. Clarification is required.
- The recited in claim 6 "the telescoping pipe assembly has an angle relative to the ground is substantially equivalent the interior layout of the mixer drum" is not readily ascertainable. Clarification is required.
- Claims 2-5 and 7-9 are rejected because of their dependency and failure to remove the ambiguity of the parent claim.

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 1-6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stoeckel et al (U.S. 3,645,452).

Stoeckel teaches high pressure tank cleaning apparatus with telescopic sections (reads on "pipe assembly", as instantly recited), which are extendable into the tank to be cleaned. The telescopic assembly of Stoeckel is fluidly connected to fluid source through the hose 85 and to the rotatable spray nozzles, positioned along the T-fitting 100 (reads on "spray bar", as instantly recited) (Abstract, col.3, lines 20-60; col.4, lines 5-15; col.5, lines 5-15, 21-52; Fig. 1-7).

The teaching of Stoeckel differs from the instantly claimed system by not positioning nozzles circumferentially along the spray bar. However, Stockel indicates that his nozzles are positioned in order to direct high pressure sprays to all surfaces within the tank for effective cleaning. It is noticed here that the court held that the particular configuration of the claimed structure is a matter of choice, which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed structure is significant, as per *In re Dailey*, 357 F. 2d 669,149 USPQ 47 (CCPA 1966).

With regard to the limitation of the instant claim 5, one skilled in the art would have found obvious to provide the source of cleaning fluid on site, while cleaning the tanks or vessels in order to decrease the cost of cleaning process.

***Allowable Subject Matter***

8. Claims 7 and 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
9. The following is a statement of reasons for the indication of allowable subject matter: the recited in claims 7 and 8 return system for automatically retracting spray bar into telescoping pipe upon deactivation of the fluid source is not anticipated or suggested fairly by Stoeckel.
10. Applicant should note that additional prior art cited in PTOL-892 shows general state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Kornakov whose telephone number is (571) 272-1303. The examiner can normally be reached on 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*M. Kornakov*

*3/8/04*

Michael Kornakov  
Examiner  
Art Unit 1746